

## Bureau of Industry and Security, Commerce

## § 705.5

705.11 Determination by the President and adjustment of imports.

705.12 Disposition of an investigation and report to the Congress.

AUTHORITY: Sec. 232, Trade Expansion Act of 1962, as amended (19 U.S.C. 1862).

SOURCE: 47 FR 14693, Apr. 6, 1982, unless otherwise noted. Redesignated at 54 FR 601, Jan. 9, 1989.

### § 705.1 Definitions.

As used in this part:

*Department* means the United States Department of Commerce and includes the Secretary of Commerce and the Secretary's designees.

*Secretary* means the Secretary of Commerce or the Secretary's designees.

*Applicant* means the person or entity submitting a request or application for an investigation pursuant to this part.

### § 705.2 Purpose.

These regulations set forth the procedures by which the Department shall commence and conduct an investigation to determine the effect on the national security of the imports of any article. Based on this investigation, the Secretary shall make a report and recommendation to the President for action or inaction regarding an adjustment of the imports of the article.

### § 705.3 Commencing an investigation.

(a) Upon request of the head of any government department or agency, upon application of an interested party, or upon motion of the Secretary, the Department shall immediately conduct an investigation to determine the effect on the national security of the imports of any article.

(b) The Secretary shall immediately provide notice to the Secretary of Defense of any investigation initiated under this part.

[47 FR 14693, Apr. 6, 1982. Redesignated at 54 FR 601, Jan. 9, 1989, and amended at 63 FR 31623, June 10, 1998]

### § 705.4 Criteria for determining effect of imports on the national security.

(a) To determine the effect on the national security of the imports of the article under investigation, the Department shall consider the quantity of the article in question or other cir-

cumstances related to its import. With regard for the requirements of national security, the Department shall also consider the following:

(1) Domestic production needed for projected national defense requirements;

(2) The capacity of domestic industries to meet projected national defense requirements;

(3) The existing and anticipated availabilities of human resources, products, raw materials, production equipment and facilities, and other supplies and services essential to the national defense;

(4) The growth requirements of domestic industries to meet national defense requirements and the supplies and services including the investment, exploration and development necessary to assure such growth; and

(5) Any other relevant factors.

(b) In recognition of the close relation between the strength of our national economy and the capacity of the United States to meet national security requirements, the Department shall also, with regard for the quantity, availability, character and uses of the imported article under investigation, consider the following:

(1) The impact of foreign competition on the economic welfare of any domestic industry essential to our national security;

(2) The displacement of any domestic products causing substantial unemployment, decrease in the revenues of government, loss of investment or specialized skills and productive capacity, or other serious effects; and

(3) Any other relevant factors that are causing or will cause a weakening of our national economy.

### § 705.5 Request or application for an investigation.

(a) A request or application for an investigation shall be in writing. The original and 1 copy shall be filed with the Director, Office of Technology Evaluation, Room H-1093, U.S. Department of Commerce, Washington, DC 20230.

(b) When a request, application or motion is under investigation, or when an investigation has been completed pursuant to § 705.10 of this part, any

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subsequently filed request or application concerning imports of the same or related article that does not raise new or different issues may be either consolidated with the investigation in progress as provided in § 705.7(e) of this part, or rejected. In either event, an explanation for taking such action shall be promptly given to the applicant. If the request or application is rejected, it will not be returned unless requested by the applicant.

(c) Requests or applications shall describe how the quantity, availability, character, and uses of a particular imported article, or other circumstances related to its import, affect the national security, and shall contain the following information to the fullest extent possible:

- (1) Identification of the applicant;
  - (2) A precise description of the article;
  - (3) Description of the domestic industry affected, including pertinent information regarding companies and their plants, locations, capacity and current output of the industry;
  - (4) Pertinent statistics on imports and domestic production showing the quantities and values of the article;
  - (5) Nature, sources, and degree of the competition created by imports of the article;
  - (6) The effect that imports of the article may have upon the restoration of domestic production capacity in the event of national emergency;
  - (7) Employment and special skills involved in the domestic production of the article;
  - (8) Extent to which the national economy, employment, investment, specialized skills, and productive capacity is or will be adversely affected;
  - (9) Revenues of Federal, State, or local Governments which are or may be adversely affected;
  - (10) National security supporting uses of the article including data on applicable contracts or sub-contracts, both past and current; and
  - (11) Any other information or advice relevant and material to the subject matter of the investigation.
- (d) Statistical material presented should be, if possible, on a calendar-year basis for sufficient periods of time to indicate trends. Monthly or quar-

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terly data for the latest complete years should be included as well as any other breakdowns which may be pertinent to show seasonal or short-term factors.

[47 FR 14693, Apr. 6, 1982. Redesignated at 54 FR 601, Jan. 9, 1989, and amended at 63 FR 31623, June 10, 1998; 65 FR 62600, Oct. 19, 2000; 72 FR 25195, May 4, 2007]

### § 705.6 Confidential information.

(a) Any information or material which the applicant or any other party desires to submit in confidence at any stage of the investigation that would disclose national security classified information or business confidential information (trade secrets, commercial or financial information, or any other information considered sensitive or privileged), shall be submitted on separate sheets with the clear legend “National Security Classified” or “Business Confidential,” as appropriate, marked at the top of each sheet. Any information or material submitted that is identified as national security classified must be accompanied at the time of filing by a statement indicating the degree of classification, the authority for the classification, and the identity of the classifying entity. By submitting information or material identified as business confidential, the applicant or other party represents that the information is exempted from public disclosure, either by the Freedom of Information Act (5 U.S.C. 552 et seq.) or by some other specific statutory exemption. Any request for business confidential treatment must be accompanied at the time of filing by a statement justifying non-disclosure and referring to the specific legal authority claimed.

(b) The Department may refuse to accept as business confidential any information or material it considers not intended to be protected under the legal authority claimed by the applicant, or under other applicable legal authority. Any such information or material so refused shall be promptly returned to the submitter and will not be considered. However, such information or material may be resubmitted as non-confidential in which case it will be made part of the public record.